

§ 1464.107

the United States of any tobacco for which an assessment or related charge required or provided for by this subpart is past due, is prohibited. The penalties and other remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3198, Jan. 22, 1997]

§ 1464.107 Recordkeeping.

(a) *Retention of records.* Each importer of tobacco shall maintain all records that are relevant to any imported tobacco that is subject to an assessment in accordance with this subpart. Such records shall be retained for a period of three years following the date of entry of such tobacco. The burden of establishing compliance with this part shall be on the importer of the tobacco.

(b) *Examination of records and reports.* The Executive Vice President, CCC, the Director, or any person authorized by one of such persons, or any auditor or agent of the Office of the Inspector General, is authorized to examine any records that such person has reason to believe are relevant to any matter pertinent to the payment of importer assessments under this subpart. Upon request of an authorized person, each importer shall make available for examination such records as are under such importer's control that may be relevant to imported tobacco that is subject to an assessment in accordance with this subpart or otherwise relevant to the administration of this subpart. Upon a failure to provide access or records, the Director may presume that such an inquiry would have produced information unfavorable to the party to the inquiry and shall make further determinations in the matter accordingly.

§ 1464.108 Reconsideration and appeal.

An importer may request the Director to reconsider any determination of the amount of any assessment due, any marketing penalty assessed, or other adverse determination rendered in accordance with this subpart. Any request for reconsideration shall be made within 30 calendar days of the date of the notification of such assessment, marketing penalty, or adverse deter-

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mination. If the importer is dissatisfied with a determination rendered by the Director with respect to a request for reconsideration, such importer may appeal the determination to the Director, National Appeals Division, USDA. Any such appeal shall be handled in accordance with the provisions of 7 CFR part 780.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3199, Jan. 22, 1997; 68 FR 65385, Nov. 20, 2003]

Subparts C-F [Reserved]

Subpart G—Tobacco Payment Program

SOURCE: 68 FR 18834, Apr. 17, 2003, unless otherwise noted.

§ 1464.601 Applicability and basic terms for payments.

This subpart sets forth the terms and conditions of the Tobacco Payment Program (TOPP). Under this program CCC will make direct payments on a farm relating to basic tobacco quotas or allotments established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*) for eligible tobaccos. Payments are subject to the availability of funds and payment formulas set out in this part.

§ 1464.602 Administration.

This subpart shall be administered by the Executive Vice President, CCC or his designee, under the general supervision of the Farm Service Agency (FSA), Deputy Administrator for Farm Programs (Deputy Administrator). The program shall be carried out in the field by State and county FSA committees and FSA employees in accordance with this subpart.

§ 1464.603 Eligibility.

For a person to be considered an eligible person for purposes of this part, such person must own or control (in some cases only) a farm for which on the status date a basic 2002 crop quota or allotment for eligible tobacco was established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*). Also, growers of that tobacco are eligible for

payments to the extent provided for in this part.

§ 1464.604 Definitions.

The definitions set forth in this section shall apply to the administration of TOPP under this subpart. The definitions in §§ 718.2 and 723.104 of this title also apply to TOPP. The definitions in this section apply rather than the definitions in §§ 718.2 and 723.104 of this title to the extent that the definitions in those sections differ. The following terms shall have the following meanings:

Controller means that person or entity who, as determined by the Deputy Administrator, controls the land used to produce eligible tobacco and share in the risk of production.

Eligible person means an owner, or (as applicable) controller of a farm for which a basic quota or allotment was established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 to the extent otherwise provided in these rules. Growers of that tobacco, as specified in this part, can also be eligible for payment. For this TOPP, an eligible person's status, as owner or controller or grower, will be determined as of July 1, 2002.

Eligible tobacco means each of the following kinds of tobacco: Flue-cured tobacco (types 11, 12, 13 and 14), burley tobacco (type 31), Virginia sun-cured tobacco (type 37), fire-cured tobacco (types 21-23), dark air-cured tobacco (types 35-36), and cigar filler/binder tobacco (types 42 through 44, 54 and 55).

Grower means for flue-cured tobacco and cigar binder tobacco, a "producer," as defined below, for all other eligible tobaccos, as "grower/tenant," as defined below.

Grower/tenant means a person or entity who provides labor to produce tobacco and share in the risk of production.

Owner means with respect to a quota or allotment farm the person or entity who owns the land for which the tobacco quota or allotment was established for the 2002 crop as of the operative status date of July 1, 2002 provided for in this part.

Payment pounds means the pounds of tobacco for which a person is eligible to be paid under this subpart.

Producer means a person or entity actively engaged in planting, growing, harvesting, and/or marketing of tobacco, or who shares in the risk of producing the crop.

Share in the risk of production means having a direct financial stake in the success of the crop through a direct share in the actual proceeds from the actual marketing of the crop which share is conditional upon the success of that marketing. Farm owners who cash-lease their farmland to a tobacco producer for the right to grow tobacco on that land and receive payment for such right regardless of whether or not a tobacco crop is marketed are not considered to share in the risk of production. Farm laborers who provide service in exchange for a wage and whose payment is not subject to the marketing of the tobacco crop are not considered to share in the risk of production.

TOPP means the Tobacco Payment Program.

§ 1464.605 Sign up.

(a) To apply for TOPP funds, persons must submit an application to the county FSA office by the date established by the Deputy Administrator. Late applications may be accepted if approved by the Deputy Administrator, if the lateness was the result of documented hardship.

(b) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1464.606 [Reserved]

§ 1464.607 Payment benefits.

(a) Payment will only be made subject to the availability of funds and only for eligible tobacco and for eligible persons who meet all conditions of eligibility for whom monies are provided by the terms of this section.

(b) The total national payment amount made available for each kind of eligible tobacco for all claimants for that kind of tobacco, will be computed by multiplying the 2002 crop national